

1 Michele R. Stafford, Esq. (SBN 172509)
Erica J. Russell, Esq. (SBN 274494)
2 SALTZMAN & JOHNSON LAW CORPORATION
44 Montgomery Street, Suite 2110
3 San Francisco, CA 94104
(415) 882-7900
4 (415) 882-9287 – Facsimile
mstafford@sjlawcorp.com
5 erussell@sjlawcorp.com

6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 BAY AREA PAINTERS AND TAPERS
PENSION TRUST FUND, and its JOINT BOARD
12 OF TRUSTEES; LES PROTEAU and MARIAN
BOURBOULIS, Trustees;
13

DISTRICT COUNCIL 16 NORTHERN
14 CALIFORNIA HEALTH AND WELFARE TRUST
FUND, and its JOINT BOARD OF TRUSTEES;
15 CHRIS CHRISTOPHERSON and JOHN
MAGGIORE, Trustees;
16

DISTRICT COUNCIL 16 NORTHERN
17 CALIFORNIA JOURNEYMAN AND
APPRENTICE TRAINING TRUST FUND, and its
18 JOINT BOARD OF TRUSTEES; CHRIS
CHRISTOPHERSON and MARIAN
19 BOURBOULIS, Trustees; and

20 DISTRICT COUNCIL 16 OF THE
INTERNATIONAL UNION OF PAINTERS AND
21 ALLIED TRADES,

22 Plaintiffs,

23 v.

24 NEW WEST PARTITIONS, a California
Corporation,
25

26 Defendant.

Case No.:

COMPLAINT

1 Parties

2 1. The Bay Area Painters and Tapers Pension Trust Fund, including the Bay Area
3 Painters and Tapers Pension Trust Fund Annuity Plan (together "Pension Funds"); District Council
4 16 Northern California Health and Welfare Trust Fund ("Health Fund"); and District Council 16
5 Northern California Journeyman & Apprentice Training Trust Fund ("Apprentice Fund") are
6 employee benefit plans as defined in the Employee Retirement Income Security Act of 1974
7 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). The Joint Boards of Trustees ("Trustees") of said Funds
8 are the named fiduciaries of the Funds under ERISA § 402(a), 29 U.S.C. §1002(a). Les Proteau
9 and Marian Bourboulis are Trustees, and fiduciaries, of the Pension Funds. Chris Christopherson
10 and John Maggiore are Trustees, and fiduciaries, of the Health Fund. Chris Christopherson and
11 Marian Bourboulis are Trustees, and fiduciaries, of the Apprentice Fund. The Health Fund,
12 Pension Funds, Apprentice Fund, and their respective Trustees and fiduciaries, are collectively
13 referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

14 2. District Council No. 16 of the International Union of Painters and Allied Trades
15 ("Union") is a labor organization as defined in § 2(5) of the National Labor Relations Act
16 ("NLRA"), 29 U.S.C. § 152(5) and is represented by counsel herein for the limited purpose of
17 collecting union dues owing as part of the subject contribution claims of ERISA Plaintiffs, and not
18 for any other cause of action. The Union expressly reserves its rights to pursue any other cause of
19 action on its own behalf.

20 3. New West Partitions, a California Corporation ("Defendant"), is an employer by
21 virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

22 Jurisdiction

23 4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by
24 virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions
25 of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA,
26 seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

27 5. Jurisdiction exists in this Court over all the claims by virtue of the Labor
28

1 Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce
2 the terms and conditions of a valid Bargaining Agreement.

3 6. To the extent jurisdiction over any claim does not exist under ERISA or the
4 LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. §
5 1367 in that they arise out of a common nucleus of operative facts that form the basis of the
6 federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

7 Venue

8 7. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an
9 action is brought under ERISA § 502 in a district court of the United States, it may be brought at
10 Plaintiffs’ discretion, in the district where the plan is administered, where the breach took place, or
11 where a defendant resides or may be found, and process may be served in any other district where
12 a defendant resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this
13 district at their principal place of business in Alameda, California. Thus, jurisdiction and venue are
14 properly grounded with this Court.

15 8. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29
16 U.S.C. § 185, as this Court has jurisdiction over the parties, as the Union maintains its principal
17 place of business in this district, its duly authorized officers or agents are engaged in representing
18 employee members in this district, and the claims arise in this district.

19 Intradistrict Assignment

20 9. The basis for assignment of this action to this court’s Oakland Division is that all of
21 the events and omissions giving rise to Plaintiffs’ claims occurred in the County of Alameda,
22 where ERISA Plaintiffs’ Funds and the Bargained Plans are administered, and where Defendant
23 therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

24 Bargaining Agreement

25 10. Defendant entered into the Northern California Drywall Finishers Master
26 Agreement (“Bargaining Agreement”) between the Union and the Wall And Ceiling Alliance,
27 requiring employer contributions to Plaintiffs’ ERISA Funds, to the Union for union dues, and to
28

1 the other plans more fully described in the Bargaining Agreement. Plaintiffs are third party
2 beneficiaries of the Bargaining Agreement.

3 11. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to
4 collect monies due by Defendant to the following plans: the IUPAT Finishing Trades Institute, the
5 IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Industry
6 Fund, the Skills, Safety, Supervisor & Survival Training Awards Recognition (STAR) Program,
7 Inc., the Vacation/Holiday Fund, and the IUPAT Political Action Together-Political Committee
8 (collectively referred to herein as the "Bargained Plans").

9 12. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs
10 (the "Trust Agreements"), which are incorporated into the Bargaining Agreement and made
11 binding on Defendant, Defendant is required to regularly pay to ERISA Plaintiffs, the Bargained
12 Plans, and the Union, certain sums of money, the amounts of which are determined by the hours
13 worked by Defendant's employees. Contributions are due on the fifteenth (15th) day of the month
14 following the month hours were worked, and considered delinquent if not received by the last day
15 of that month. Defendant is also required, pursuant to the Bargaining and Trust Agreements, to
16 pay liquidated damages in the amount of ten percent (10%) for each delinquent contribution, but in
17 the amount of twenty percent (20%) for each delinquent contribution which is the subject of
18 litigation. Moreover, the Bargaining and Trust Agreements provide that interest accrues on
19 delinquent contributions at the rates reasonably set by the Trustees from the day contributions
20 become delinquent, which is the first (1st) day of the month following the month in which payment
21 was due, until paid.

22 13. The Bargaining Agreement further requires Defendant to maintain time records or
23 time cards, and to submit any and all relevant records to Plaintiffs for examination to determine
24 whether Defendant is making full and prompt payment of all sums required to be paid by it to
25 Plaintiffs. Should an audit of Defendant's records reveal Defendant has failed to provide full and
26 prompt payment of all sums due, Defendant must reimburse Plaintiffs for the amounts due,
27 including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust
28

1 Agreements.

2 Factual Allegations

3 14. Defendant has failed and refused to pay contributions for hours worked by its
4 employees during the months of July, August and September 2014. Liquidated damages and
5 interest have been incurred and are owed to Plaintiffs for the unpaid contributions for that period.

6 15. Plaintiffs are also entitled to recover any and all other contributions, and all
7 liquidated damages and interest on delinquent contributions not specified above, found due on
8 timecards, audit, or otherwise through the time of Judgment. Plaintiffs reserve the right to conduct
9 an audit to determine whether there are any additional amounts due from Defendant.

10 **FIRST CAUSE OF ACTION**

11 **For Payment of Delinquent Contributions, Interest, Liquidated Damages,
12 Attorneys' Fees and Costs Against Defendant**

13 16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

14 17. Defendant has a contractual duty to timely pay the required contributions to
15 Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining
16 Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining
17 Agreement, and Trust Agreements incorporated therein, to permit an audit of its records to
18 determine whether it is making full and prompt payment of all sums required to be paid by it to
19 Plaintiffs.

20 18. In addition, Defendant has a statutory duty to timely make the required payments to
21 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

22 19. By failing to make the required payments to Plaintiffs, Defendant breached the
23 Bargaining Agreement and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA §
24 301(a).

25 20. Defendant's failure and refusal to pay the required contributions was at all times,
26 and still is, willful. Defendant continues to breach the Bargaining Agreement, and incorporated
27 Trust Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and
28 done with knowledge and intent.

21. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained from continuing to refuse to perform as required thereunder.

22. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

1 (c) Interest on all late-paid and unpaid contributions at the rates set in
2 accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B),
3 29 U.S.C. § 1132(g)(2)(B).

4 2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit
5 fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and
6 in accordance with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301,
7 29 U.S.C. § 185, for all Plaintiffs.

8 3. For an order,

9 (a) requiring that Defendant comply with its obligations to Plaintiffs under the
10 terms of the Bargaining Agreement and the Trust Agreements;

11 (b) enjoining Defendant from violating the terms of those documents and of
12 ERISA; and

13 (c) enjoining Defendant from disposing of any assets until said terms have been
14 complied with, and from continuation or operating of Defendant's business until said terms have
15 been complied with.

16 4. That the Court retain jurisdiction of this case pending compliance with its orders.

17 5. For such other and further relief as the Court may deem just and proper.

18 Dated: November 10, 2014

SALTZMAN & JOHNSON
LAW CORPORATION

19
20 By: _____ /S/

21 Erica J. Russell
22 Attorneys for Plaintiffs
23
24
25
26
27
28